

- (2) The respondent's application for Appeals Board review of that Order was received and filed of record with the Division of Workers Compensation on February 24, 1997.

The right to appeal is statutory. See Resolution Trust Corp. v. Bopp, 251 Kan. 539, 541, 836 P.2d 1142 (1992). When the record reveals lack of jurisdiction, the Board's authority extends no further than to dismiss the action. See State v. Rios, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994). Ordinarily, parties cannot consent, waive, or confer jurisdiction on a court. See In re Marriage of Harris, 20 Kan. App. 2d 50, 58, 883 P.2d 785, rev. denied 256 Kan. 995 (1994).

The time interval in which a party must file a written request for Appeals Board review of a decision made by an Administrative Law Judge is governed by K.S.A. 1996 Supp. 44-551(b)(1) which provides in pertinent part:

"All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days."

As previously noted, Administrative Law Judge Nelsonna Potts Barnes entered an Order in this matter dated January 31, 1997. Accordingly, the effective date of the Order was the day after or February 1, 1997. See K.A.R. 51-18-2. Ten days after the effective date of this Order was February 11, 1997. See K.A.R. 51-17-1. However, since the period of time prescribed is less than 11 days, intermediate Saturdays, Sundays and legal holidays are excluded from the computation, per K.S.A. 60-206(a). See McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996). Therefore, the respondent's time to file its application for review by the Appeals Board would have been extended to Friday, February 14, 1997. Respondent filed its Application for Review on February 24, 1997, which was clearly out of time.

In its Application for Review counsel for respondent makes the statement that he did not receive the Order from the Administrative Law Judge that is the subject of this appeal until February 24, 1997. The Appeals Board also notes the Order entered by the Administrative Law Judge shows the respondent attorney's address as one which respondent attorney asserts has not been his office location for over two years. Respondent attorney's Entry of Appearance shows a different address.

The Appeals Board has visited this issue before in the case of Jaime Still v. Huntington Park Amoco, Docket No. 205,358 (March 1996). In that case, the Board noted that some statutes which prescribe the time for an appeal to be filed do permit the extension of the appeal time upon a party's showing of excusable neglect based upon failure to learn of the entry of judgement. See K.S.A. 60-2103(a); Schroeder v. Urban, 242 Kan. 710, 750 P.2d 405 (1988). However, K.S.A. 44-551(b)(1), as amended, the statute which prescribes the time period to appeal a matter from the Administrative Law Judge to

the Appeals Board, does not have language that would give the Board authority to extend the appeal time. In an administrative proceeding, the time for taking an administrative appeal, as prescribed by statute, is jurisdictional and delay beyond the statutory time is fatal to an appeal. State Bank Commissioner v. Emery, 19 Kan. App. 2d 1063, Syl. ¶1, 880 P.2d 783 (1994). Accordingly, the Appeals Board finds that because claimant's Application for Review was filed out of time, the Appeals Board does not have jurisdiction to review this preliminary hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by respondent on February 24, 1997, is out of time and should be, and is hereby, dismissed. The Order entered by Administrative Law Judge Nelsonna Potts Barnes dated January 31, 1997, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

c: Kendall R. Cunningham, Wichita, KS
Gregory K. Barker, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director